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OFFICE OF PETITIONS

In re Application of :
Chen, et al. : DECISION REFUSING STATUS
Application No. 10/760,119 : UNDER 37 CFR 1.47(a)
Filed: January 17, 2004 :
Atty. Dkt. No.: 130-040 :
For: COMPRESSION-MOLDED :
VEGETABLE WAX-BASED CANDLE :

This decision is in response to the petition under 37 CFR 1.47(a), filed October 26, 2004.

The petition is **DISMISSED**.

Rule 47 applicant is given TWO MONTHS from the mailing date of this decision to reply, correcting the below-noted deficiencies. Any reply should be entitled "Request for Reconsideration of Petition Under 37 CFR 1.47(a)," and should only address the deficiencies noted below, except that the reply may include an oath or declaration executed by the non-signing inventor. Failure to respond will result in abandonment of the application. Any extensions of time will be governed by 37 CFR 1.136(a).

The above-identified application was filed January 17, 2004 without an executed oath or declaration. Accordingly, a Notice to File Missing Parts of Nonprovisional Application was mailed April 22, 2004 requiring, *inter alia*, an executed oath or declaration and a surcharge.

A grantable petition under 37 CFR 1.47(a) requires: (1) proof that the non-signing inventor cannot be reached or refuses to sign the oath or declaration after having been presented with the application papers (specification, claims and drawings); (2) an acceptable oath or declaration in compliance with 35 U.S.C. §§ 115 and 116; (3) the petition fee; and (4) a statement of the last known address of the non-signing inventor.

The instant petition fails to satisfy items (1) and (2) set forth above.

As to item (1), petitioners allege joint inventor Fabian T. Destefano cannot be reached and that joint inventors Mary Grace P. David and John A. Ferguson have refused to execute the declaration after having been presented with the application papers.

Petitioners have failed to present any evidence to establish that inventor Fabian T. Destefano cannot be reached or located. Where inability to reach or locate a non-signing inventor is alleged, petitioners are required to establish that diligent effort was made to locate the non-signing inventor and provide the non-signing inventor with a complete copy of the patent application (specification, including claims, drawings, and oath or declaration).

Any renewed petition must be supported by evidence that sufficiently establishes that despite diligent effort, the non-signing inventor cannot be located. A statement of facts should be submitted that fully describes the exact facts that are relied on to establish that a *diligent effort* was made to locate the non-signing inventor. The statement of facts must be signed, where at all possible, by a person having *firsthand knowledge* of the facts recited therein. Statements based on hearsay, will not normally be accepted. At the very least, a search of the internet, telephone directories, and international registries should be undertaken in regions where it is suspected the non-signing inventor may reside. Petitioner should reference and supply evidence of any such searches in a renewed petition. See, MPEP 409.03(d).

Petitioners have failed to present any evidence that joint inventors Mary Grace P. David and John A. Ferguson refused to execute the declaration after having been presented with a complete copy of the application papers (specification, including claims, drawings, and oath or declaration).

Before a refusal to sign an oath or declaration can be alleged, it must be demonstrated that a *bona fide* effort has been made to present a copy of the application papers (specification, including claims, drawings, and oath or declaration) to each non-signing inventor. Petitioners have failed to establish that the non-signing inventors received a copy of the application papers (specification, claims, drawings, and oath or declaration) and thereafter refused to execute the oath or

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